

**State Water Resources Control Board
Administrative Hearings Office
Alan B. Lilly, Presiding Hearing Officer**



State Water Resources
Control Board Meeting
October 7, 2020

OVERVIEW OF PRESENTATION

- Background
- AHO staff
- AHO webpages and FTP site
- Current AHO hearings
- Future AHO actions

TRADITIONAL WATER RIGHT HEARING PROCESS

- One or two State Water Board members are the hearing officers
- After hearing, a State Water Board staff team works with the hearing officers to prepare draft decision
- Entire State Water Board then considers draft decision in closed session and holds public meeting to receive comments from interested parties, make edits, and vote on decision

CREATION OF ADMINISTRATIVE HEARINGS OFFICE

- Assembly Bill 747 was enacted as Chapter 668 of 2018 California Statutes
- This legislation established Water Code sections 1110-1114, effective July 1, 2019
- This legislation did not change statutes regarding traditional water-right hearing process, which remains as an alternative process

ADMINISTRATIVE HEARINGS OFFICE STATUTORY PROVISIONS

Water Code § 1110

- Administrative Hearings Office is an “independent organization unit” within State Water Board to provide “a neutral, fair, and efficient forum for adjudications”

Water Code § 1111

- Created Presiding Hearing Officer position
- Authorizes Presiding Hearing Officer to hire other personnel, including other hearing officers and technical experts



Media Release

State Water Board Selects Alan Lilly as First Administrative Hearings Officer for Specified Water Rights Proceedings
Appointment Follows 2018 Legislative Mandate for Administrative Hearings Office

September 18, 2019

Contact: George Kostyrko

george.kostyrko@waterboards.ca.gov

AHO PERSONNEL

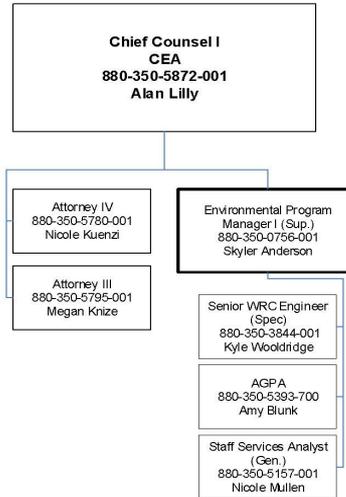


STATE WATER RESOURCES CONTROL BOARD ADMINISTRATIVE HEARINGS OFFICE



Gavin Newsom
Governor

*Eileen Sobeck, Executive Director
September 1, 2020*



Entire 350 Org.: 7.0
Authorized positions: 7.0
Temporary blanket positions: 0.0
Total Vacancies: 0.0

ASSIGNMENTS TO ADMINISTRATIVE HEARINGS OFFICE

Water Code § 1112

- An AHO hearing officer shall preside over all hearings involving the following types of water-right enforcement matters:
 - Administrative civil liability complaints
 - Proposed cease-and-desist orders
 - Proposed revocations of water-right permits and licenses
- State Water Board may assign other adjudicative hearings to AHO
- State Water Board may ask AHO to provide hearing officers to assist Board in conducting other adjudicative hearings
- AHO hearing officers may perform additional work requested by Board, including hearings in non-adjudicative matters, mediations and overseeing investigations

AHO ORDERS

Water Code § 1114

- In some types of proceedings, AHO hearing officer normally must adopt a final order within 90 days after the matter is submitted
- For these types of proceedings, AHO final orders are subject to review by State Water Board through petitions for reconsideration
- In all other types of proceedings, AHO hearing officer normally must prepare a proposed order within 90 days for consideration by the State Water Board. Board then may, within 90 days:
 - Adopt proposed order, without any changes or with minor amendments
 - Reject proposed order and remand the matter to the AHO for further proceedings or
 - Reject proposed order and decide the case, with or without additional evidence

AHO WEBPAGE - HOMEPAGE



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The State Water Resources Control Board's Administrative Hearings Office ("AHO") webpage and the linked AHO webpages provide general information about the AHO and pending AHO proceedings. The general information provided in these webpages does not alter or supersede any statute or regulation or any of the specific information for each proceeding.

- [Background](#)
- [Leadership](#)
- [Notices and Orders](#)
- [Administrative Hearings Office Proceedings](#)
 - [Water-Right Enforcement Matters – Annual Reports](#)
 - [Water-Right Enforcement Matters – Other](#)
 - [Water-Right Permitting Matters](#)
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AHO WEBPAGE – NOTICES AND ORDERS



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Notices and Orders

- [2020-09-23 Post-Hearing Order \(Gonzalves\)](#)
- [2020-09-11 Notice of Assigment Kings River Fas](#)
- [2020-09-11 Proposed Order \(Timberlake Estates\)](#)
- [2020-08-10 Order Approving Settlement Agreement \(Sacramento County\)](#)
- [2020-09-02 Post-Hearing Order \(Sacramento County\)](#)
- [2020-09-01 Gowan Order 2020-0105-EXEC and 2020-08-19 Signed Waterboard_Gowan Settlement Agreement](#)
- [2020-08-27 Notice of Public Hearing \(Vierra\)](#)
- [2020-08-27 Notice of Public Hearing \(Ohm\)](#)
- [2020-08-17 Notice of Public Hearing \(Speckman\)](#)
- [2020-08-06 Notice of Cancellation of Hearing \(Regular Baptist Camp\)](#)
- [2020-08-03 Supplemental Notice of Public Hearing \(Gonzalves\)](#)

AHO WEBPAGE – SPECIFIC MATTERS



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Water-Right Enforcement Matters – Annual Reports

- [Timberlake Estates Homeowners Association \(License 7716, Application A017108\)](#)
- [Regular Baptist Camp, Inc. \(License 10302, Application A022395\)](#)
- [Brent Owen \(License 10004, Application A016078\)](#)
- [Sacramento County \(License 11844, Application A025985\)](#)
- [Barbara J. Wakeham \(Statement S003225\)](#)
- [Pimentel Family Trust RLT \(Statements S023607, S023608 and S023609\)](#)
- [James C. Gowan \(Statements S021346, S021347, S021348, S021350 and S021351\)](#)
- [James V. Simoni \(Statement S000486\)](#)

AHO HEARINGS



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2020-09-24 Status Conference (City of Solvang)

14 views • Streamed 1 week ago



2020-09-16 Kevin Gonzalves CDO/ACL Public Hearing

84 views • Streamed 2 weeks ago



2020-09-09 Kevin Gonzalves CDO/ACL Public Hearing

79 views • Streamed 3 weeks ago



AHO FTP SITE

AHO-FTP (for AHO postings)

Water-Right Enforcement - Other

Kevin Gonzalves (UN001454) 

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17 Items (1 Folders, 16 Files)

<input type="checkbox"/>	Name	Size	Modified	Keywords
<input type="checkbox"/>	 Hearing Documents		09/15/20	
<input type="checkbox"/>	 2019-11-12 Gonzalves Draft CDO (with Exhs. A-I).pdf	49.3 MB	03/10/20	
<input type="checkbox"/>	 2019-11-12 R. Cervantes ltr. to K. Gonzalves (without encls.).pdf	1.3 MB	03/10/20	
<input type="checkbox"/>	 2019-11-25 e-mail chain, K. Gonzalves, J. Prager and A. Lilly.pdf	170.0 KB	03/10/20	
<input type="checkbox"/>	 2020-05-05 ACLC_FINAL.pdf	348.3 KB	05/06/20	
<input type="checkbox"/>	 2020-05-05 ACLTransmittalLetter.FINAL.pdf	315.9 KB	05/06/20	
<input type="checkbox"/>	 2020-05-05 Attachment A - ROI.pdf	11.0 MB	05/06/20	
<input type="checkbox"/>	 2020-05-05 Attachment B - BEN analysis.pdf	124.9 KB	05/05/20	
<input type="checkbox"/>	 2020-05-05 Attachment C - BEN analysis.pdf	245.5 KB	05/05/20	
<input type="checkbox"/>	 2020-05-05 Attachment D -BEN analysis.pdf	166.5 KB	05/05/20	
<input type="checkbox"/>	 2020-05-05 B. Coats e-mail to K. Gonzalves.pdf	107.0 KB	05/06/20	
<input type="checkbox"/>	 2020-05-05 Hearing Request Form.pdf	95.6 KB	05/05/20	
<input type="checkbox"/>	 2020-05-05 Notice of Availability of Administrative Hearings Office FTP sites.pdf	149.5 KB	05/05/20	
<input type="checkbox"/>	 2020-05-06 2nd A. Lilly e-mail to B. Coats.pdf	177.6 KB	05/06/20	
<input type="checkbox"/>	 2020-05-06 A. Lilly e-mail to B. Coats.pdf	170.8 KB	05/06/20	
<input type="checkbox"/>	 2020-05-06 B. Coats e-mail to A. Lilly.pdf	173.9 KB	05/06/20	
<input type="checkbox"/>	 2020-05-26 Hearing Request Form Kevin Gonzalves.pdf	5.7 MB	05/26/20	

AHO HEARINGS

- AHO has held five hearings
- All hearings have been held by Zoom teleconference
 - Multi-format presentations (people and exhibits)
 - Hearing process has worked well
 - Recordings and Zoom-generated transcripts are immediately available

AHO ZOOM-GENERATED HEARING TRANSCRIPT

991

01:57:35.370 --> 01:57:36.270

Alan Lilly: before we hang up.

992

01:57:38.130 --> 01:57:43.500

Alan Lilly: Everybody have a good day and thank you all very much. I really appreciate everyone's professional attitude.

993

01:57:43.530 --> 01:57:44.040

Alan Lilly: Toward this

994

01:57:45.000 --> 01:57:46.740

Alan Lilly: I know that we have some big issues, but I

995

01:57:46.920 --> 01:57:49.980

Alan Lilly: Appreciate you're all working professionally to

996

01:57:50.040 --> 01:57:53.070

Alan Lilly: Try to come up with a process to address them so

997

01:57:53.340 --> 01:57:54.480

Darren Brumback: Have a good day. Thank you.

998

01:57:54.960 --> 01:57:56.280

Brett Stroud: Thank you. Thank you.

999

01:57:56.520 --> 01:57:57.180

Jessica Diaz: Thank you.

AHO PENDING ENFORCEMENT MATTERS

- ACL Complaints: alleged failures to file timely 2018 licensee reports and supplemental statements of water diversion and use (8 matters)
 - AHO has held three hearings; AHO has sent two proposed orders to Board and AHO is working on third proposed order
 - In three matters, the parties settled without any hearings
 - In two matters, respondents waived their prior requests for hearings
- Draft CDO and ACL Complaint involving alleged unauthorized diversions
 - AHO hearing and site inspection held; parties are preparing closing briefs
- Draft CDOs involving Delta diversions (pending since 2010; recently assigned to AHO)
 - Five AHO hearings are scheduled for dates in November 2020 through January 2021

AHO PENDING PERMITTING MATTERS

- Water-right change petitions (3 matters):
 - AHO has held one hearing; parties have filed closing briefs; AHO is working on proposed order
 - One petition is in pre-hearing process
 - One set of petitions to change four permits is in noticing process
- Petitions to change fully appropriated stream declaration
 - Two petitions involving same FAS declaration; petitions are in pre-hearing process
- Water-right application
 - One application is in pre-hearing process

FUTURE ASSIGNMENTS TO AHO

- July 10, 2020 Memorandum from Deputy Director for Division of Water Rights and AHO Presiding Hearing Officer to Water Board's Executive Director
 - Discusses process for assignments of water-right permitting matters to AHO and subsequent proceedings
 - Describes three tiers of projects, based on levels of complexity and prior Division of Water Rights staff involvement
 - Discusses *ex parte* rules
 - Describes potential processes for coordination between Division of Water Rights Hearings Branch and Permitting and Petition Sections and AHO

ADMINISTRATIVE HEARING OFFICE GOALS

- Neutral and Fair Hearings
 - Administrative Adjudication Code of Ethics (Govt. Code §§ 11475-11475.70) applies to AHO hearing officers (Water Code § 1113)
 - AHO is independent from other Water Board divisions and offices (but may coordinate and collaborate with Division of Water Rights hearing and permitting staffs in some matters)
 - AHO personnel avoid individual (*ex parte*) contacts with parties
 - AHO holds pre-hearing conferences and status conferences (with all parties) as necessary
 - AHO posts all communications to AHO-FTP site, which is accessible by all parties
 - AHO hearing officers will recuse themselves when conflicts of interest are present

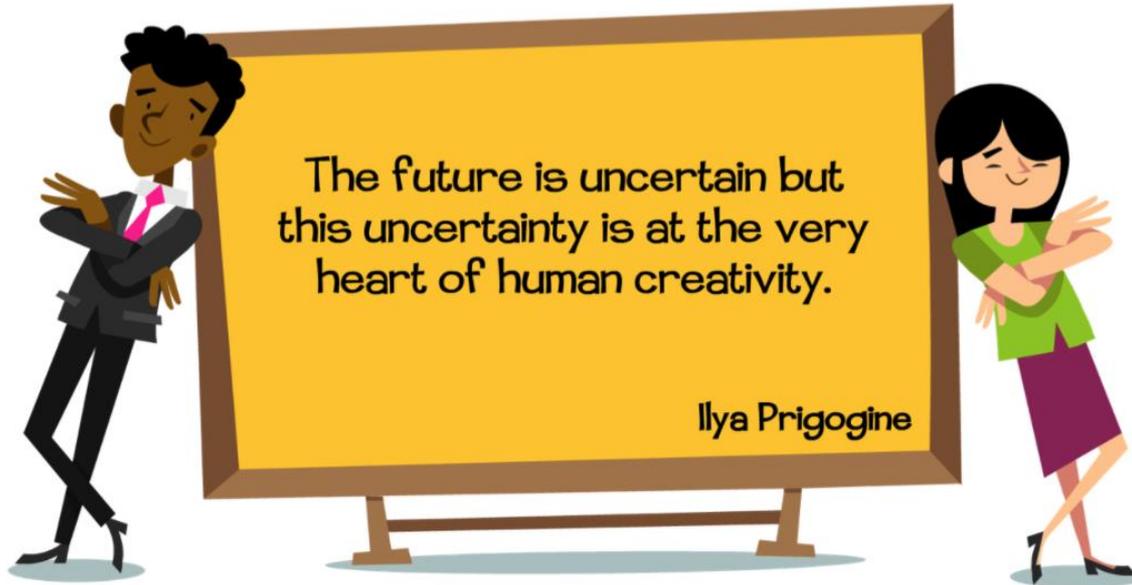
ADMINISTRATIVE HEARING OFFICE GOALS

- Efficient Hearings
 - AHO hearing officers and technical staff have water-rights expertise
 - Entire process of holding hearings and preparing proposed orders is within AHO
 - AHO can focus on water-right hearings
- Prompt Decisions
 - Statutes specify various deadlines, normally 90 days after matter is submitted, for all adjudicatory hearings
 - Zoom avoids delays for preparation of hearing transcripts

ADMINISTRATIVE HEARING OFFICE GOALS

- Help Division of Water Rights reduce its water-right backlogs
 - Enforcement matters
 - Permitting matters
- Establish processes for promptly resolving future water-right disputes
 - Enforcement matters
 - Permitting matters
 - Statutory adjudications
 - Court references
- AHO's success in helping Division of Water Rights reach these goals will depend on numbers of new assignments of matters to AHO and AHO's continued efficiency

NEXT YEAR AND BEYOND



CONCLUSION

